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Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
July 1, 2004	)	WCB/Pricing 04-18
Annual Access Charge Tariff Filings	)	

PETITION OF AT&T CORP.

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Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, and the Commission's Order, DA 04-1049, released April 19, 2004,[1] AT&T Corp. ("AT&T") submits this Petition addressed to the annual interstate access tariffs filed on June 16, 2004 by local exchange carriers ("LECs").

INTRODUCTION AND SUMMARY

The LECs' 2004 Annual Access Charge Tariffs contain a number of serious errors and require suspension and investigation. As detailed below, the LECs' access tariffs are, in numerous respects, flatly inconsistent with the Commission's rules, relevant court decisions, and publicly available data. The resulting overstated access charges undermine the core objectives of the 1996 Telecommunications Act, impede competition and deny consumers the corresponding benefits of competition. Accordingly, AT&T respectfully urges the Commission to suspend and investigate the unsupported and inflated tariff rates detailed below.[2] Part I of these comments

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[1] *In the Matter of July 1, 2004 Annual Access Charge Tariffs,* WCB/Pricing 04-18, DA 04-1049 (released April 19, 2004).

[2] A tariff is subject to rejection when it is *prima facia* unlawful, in that it demonstrably conflicts with the Communications Act, as amended by the Telecommunications Act of 1996 or a Commission rule, regulation or order. *See, e.g., American Broadcasting Companies, Inc.* v. (continued...)

demonstrates that the tariffs filed by numerous rate-or-return carriers should be suspended, and Part II addresses the tariffs of the price cap carriers.

I. TARIFFS FILED BY SEVERAL RATE-OF-RETURN CARRIERS RAISE ISSUES THAT WARRANT SUSPENSION.

A. The Commission Should Suspend And Investigate The Tariffs Of LECs With A Long History Of Earnings That Exceed The Authorized Rate-Of-Return.

In 1997, the Commission properly suspended multiple interstate access tariffs where statistical analyses showed that the projections in those tariffs had resulted in systematic errors in rates, and where those errors were statistically significant.[3] A similar analysis confirms that several rate-of-return LECs' 2004/2005 tariffs must be suspended. As demonstrated in Exhibit A,[4] several rate-of-return LECs have relied on projections that result in returns that substantially exceed the Commission-prescribed return of 11.25%,[5] *i.e,* these LECs have relied on projections that result in systematic overearnings. Moreover, the amount by which these LECs have consistently overearned is not explained by random error. Rather the overstatements are

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(...continued)
AT&T, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI* v. *AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T* (Transmittal No. 148), Memorandum Opinion and Order, 56 RR2d 1503 (1984); *ITT* (Transmittal No. 2191), 73 F.C.C.2d 709, 716 n.5 (1979) (citing *AT&T*, 46 F.C.C.2d 81, 86 (1974)). Appendix A identifies the companies whose tariffs should be suspended and investigated and whose rates should be remedied.

[3] *1997 Annual Access Tariff Filings*, CC Docket No. 97-149, Memorandum Opinion & Order, FCC 97-403, ¶¶ 19-21 (rel. Dec. 1, 1997).

[4] All Exhibits are attached hereto.

[5] *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Order, 5 FCC Rcd. 7507 (1990), *petitions for review docketed sub nom., Illinois Bell Telephone Co., et al.* v. *FCC*, No. 91-1020 (D.C. Cir. filed Jan. 11, 1991), *recon.* 6 FCC Rcd. 7193 (1991) ("*1990 ROR Represcription Order*"). The Commission prescribed the authorized overall rate of return on investment of 11.25% with certain buffer zones. *See also* 47 C.F.R. § 65.700. Specifically, rate of return LECs are allowed to earn 0.40 percentage points over the prescribed return on each service category or 0.25 percentage points over the prescribed rate if (continued...)

statistical outliers. *See* Exhibit A. Accordingly, consistent with Commission precedent, the Commission should suspend and investigate these LECs' tariffs.

By suspending and investigating the tariffs, the Commission and other parties will have sufficient time to identify the errors that cause the systematic overearnings. Without a suspension and an investigation, it is not feasible for interested parties or the Commission to identify the specific problems with the LECs' methodologies because the LECs do not submit the data necessary for such an analysis. Indeed, when carriers are part of a larger association, such as National Exchange Carrier Association ("NECA"), parties other than NECA do not have access to *any* of the underlying data. And even when data are available for review, it is often difficult to determine whether these data have been manipulated to achieve the carriers' intended result. Moreover, carriers have months to prepare tariff filings that must be reviewed by petitioners and the Commission in the space of days.

For these reasons, the Commission should suspend the tariffs of those LECs that have consistently earned returns in excess of the prescribed level over an extended period of time to investigate the source or sources of their forecast errors and determine whether a rate prescription is appropriate.[6]

(...continued)
the return is measured across the entire base.

[6] The following LECs' tariffs should be suspended because they have consistently overearned: VITELCO, NECA, ALLTEL-AR, ALLTEL-FL, ALLTEL-MO, ALLTEL-NY, ALLTEL-OK, Concord. *See* Exhibit A.

B. Certain LECs Should Be Required To Make Mid-Course Adjustments To Account For Substantial Overearnings During The First Year Of The Monitoring Period.

The monitoring reports filed by the rate-of-return carriers for the period ending December 31, 2003, which constitute the first year of the current 2003-2004 monitoring period show that a number of rate-of-return LECs achieved returns that substantially exceed the Commission-prescribed 11.25% rate-of-return. *See* Exhibit B-1. These LECs therefore should be required to make downward adjustments to their rates for the 2004 period to bring these LECs' overall returns for the 2003-2004 period within the range of 11.25%.

Small variations in the rate-of-return LECs' returns from the Commission-prescribed level are to be expected due to, among other things, forecast errors and changes in marketplace conditions. But large variations show that the LECs' data are unreliable, and require correction. And that is precisely why the Commission requires interim monitoring reports. As explained by the Commission: "Rate-of-return carriers estimate their costs of providing exchange access services and project their demand for such services. They then file tariffs containing the rates for their access services that they believe reflects, given their estimates of costs and demand, will result in earnings within the prescribed rate of return at the end of the two year monitoring period. During the course of the two-year period, rate of return carriers must review how their *actual costs and demand calculations compare to their earlier projections, and make rate adjustments, if necessary, to ensure that they do not exceed their prescribed rate of return.*"[7]

[7] *In the Matter of General Communications Inc., Complainant, v. Alaska Communications, Inc. and Alaska Communications Systems, Inc. d/b/a ATU Telecommunications ATU Telecommunications d/b/a Anchorage Telephone Utility,* EB-00-MD-016, Memorandum Opinion and Order, 16 FCC Rcd. 2834, ¶ 5 (2001) ("*GCI v. ACS*") (emphasis added) *citing* MCI, 59 F.3d at 1415; *see In the Matter of Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements, Report and* (continued...)

The LECs have never seriously disputed that mid-course corrections are appropriate. In 2002, for example, NECA sought a "mid-course" correction in its revenue requirements in its 2002 annual tariff filing on the grounds that its overall returns would fall below the Commission-prescribed rate-of-return without such an adjustment.[8] By the same logic, and consistent with the Commission's rules, NECA, which now reports special access return exceeding 17%, should have filed, but did not file, a midcourse correction to ensure that its returns fall within the Commission-prescribed 11.25% rate-of-return.

In the past, NECA has defended not making *downward* adjustments on the ground that its pools "historically experience earnings erosion" and that returns will decrease to permissible levels as its members report actual data.[9] But that argument is not available to NECA here because its current overearnings are so large that it is not plausible that such erosion would result in a rate-of-return near 11.25%. Indeed, NECA's returns would have to fall to below 5% for that to happen. Moreover, NECA's prior claims have not panned out – there is no evidence that NECA earnings in the second year have reduced the return over the monitoring period to the prescribed level. On the contrary, as demonstrated in Exhibit B-2, with the exception of a single period during the past several years, if there were substantial overearnings in the first monitoring period, there also were substantial overearnings in the full two-year tariff period.

(...continued)
Order, 1 FCC Rcd. 952, 954, ¶ 10 (1986).

[8] *See National Exchange Carrier, Inc. Tariff FCC No. 5, Transmittal No. 952,* WC Docket No. 02-356, Order, DA 02-3100, ¶ 4 (rel. Nov. 8, 2002).

[9] *See, e.g.,* Reply of the National Exchange Carrier Association, Inc., WCB/Pricing 02-12; NECA Transmittal No. 939, filed June 28, 2002.

Recent federal court decisions make it even more critical that rate-of-return LECs implement appropriate mid-course adjustments. Under prior Commission precedent and longstanding tradition, ratepayers were at least partially protected from excessive charges because they were allowed to retroactively collect excess earnings from rate-of-return carriers. However, under *ACS of Anchorage, Inc.* v. *FCC*, 290 F.3d 403, 410-412 (D.C.Cir. 2002) ("*ACS* v. *FCC*"), retroactive refunds are no longer available after a tariff is permitted to take effect without suspension because the tariff is then "deemed lawful" pursuant to 47 U.S.C. § 204(a)(3). In these circumstances, ratepayers can only seek relief on a prospective basis and even that relief is available only if some provision in the tariff is subsequently found to be unlawful.[10] Thus, the principle protection that consumers and ratepayers now have against tariffed rates that produce unlawful returns is a strenuous pre-effective tariff review. The Commission must ensure that its rate-of-return prescriptions are enforced as "a means to achieve just and reasonable rates."[11]

Accordingly, the Commission should require NECA and each LEC identified in Exhibit B-1 to file mid-course rate reductions to reflect the fact that their 2003 current monitoring period earnings exceed the Commission's prescribed level. Specifically, the Commission should require these LECs to file rates that will produce the prescribed return for the current period. As a second best solution, the Commission should suspend the tariffs of these carriers to allow for a true-ups if rates are later found to be unlawful.

[10] If a tariff has been properly labeled and filed on 15 or 7 days notice and the Commission has not suspended the tariff prior to its effective date, the tariff will be deemed lawful and in almost all instances will insulate the filing carrier from an obligation to pay refunds to customers who were overcharged.

[11] *ACS* v. *FCC*, 290 F.3d at 410 (*citing Nader* v. *FCC*, 520 F.2d 182, 203 (D.C. Cir. 1975)).

C. Several Rate-of-Return Carriers Have Overstated Their Corporate Operations Expenses.

The corporate operations expenses filed by CCTX, Hargray, VITELCO, Farmers, Fort Bend, Chillicothe and Moultrie are significantly overstated. Corporate operations expenses represent general corporate overhead functions, such as executive management, accounting and finance, human resources/personnel, information management, legal support, and other similar administrative support activities.[12] The Commission performed a comprehensive investigation of the reasonableness of these expenses in 1997 and concluded that these costs did "not appear to be costs inherent in providing telecommunications services, but rather may result from managerial priorities and discretionary spending."[13] As a result of this investigation, the Commission capped the corporate expenses at a reasonable per-line amount to keep these expenses from growing out of control for USF funding purposes. Such constraints, however, were not placed on carriers in the development of their access charges. It is now clear that several carriers have taken advantage of this gap in the Commission's rules, and have included in their tariffs corporate operations expenses that exceed reasonable levels. Specifically, the corporate operations expense per loop for these LECs greatly exceed the average of other similarly sized LECs. *See* Exhibit C.

The corporate expense per loop analysis in Exhibit C is based on the LECs' NECA USF Submission for 2003, which was filed with the Commission and USAC in October 2003.[14] This

[12] Corporate operations expenses are recorded in Account 6710 (Executive and planning) and Account 6720 (General and administrative). *See* 47 C.F.R. §§ 32.6710 and 32.6720.

[13] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 283 (rel. May 8, 1997).

[14] Industry Analysis Division, Federal Communications Commission, NECA's Overview of the Universal Service Fund, Submission of 2002 Study Results, October 2003, available at (continued…)

NECA submission contains the access lines and corporate operations expense data for all local exchange carriers, and this information was used to derive average total corporate operations expense per loop for carriers in various size categories. These data confirm that the corporate overhead expenses filed in the tariffs filed by CCTX, Hargray, VITELCO, Farmers Tel Coop, Fort Bend, Chillicothe and Moultrie exceed the average of similarly sized carriers by 173.88%, 207.73%, 167.90%, 111.78%, 112.28% and 105.88%, respectively. *See* Exhibit C. In addition, these carriers' corporate overhead expenses exceed those submitted by the other similarly-sized LECs in the 2004 annual tariff filings by substantial amounts. *See id.*

Moreover, CCTX, VITELCO, Farmers, Fort Bend and Chillicothe have overearned in the past year. *See* Exhibit B. These carriers should not be allowed to continue to operate inefficiently to the detriment of ratepayers, and ultimately consumers. As the Commission has previously held, corporate operations expenses are incurred at the discretion of carriers and reasonable judgment must be demonstrated.[15] The identified LECs have not demonstrated that their inflated corporate operations expenses were prudently incurred and, accordingly, they should not be allowed to include corporate overheads beyond a reasonable threshold in their access charges for the prospective 2004/2005 tariff period. Thus, these LECs' corporate operations expenses should be disallowed or, alternatively, their tariffs should be suspended and placed under investigation.

(...continued)
http://www.fcc.gov/wcb/iatd/neca.html.

[15] *Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to establish Reporting Requirements*, CC Docket No. 86-127, ¶¶ 10-12 (rel. Dec. 3, 1996).

D. **Several Rate-of-Return LECs Understate Prospective Traffic Sensitive Demand and Overstate Local Switching and Information Surcharge Rates.**

Concord, Farmers, Horry and VITELCO substantially understate the 2004/2005 projected demand used to develop traffic sensitive access rates, resulting in inflated local switching rates and an inflated information surcharge totaling $1.7 million. *See* Exhibit D. Accordingly, the Commission should suspend these carriers' tariffs and open an investigation to determine appropriate traffic sensitive demand projections.

That these carriers' demand projections for the 2004/2005 period are vastly understated is evident from their own *actual* demand data for 2000 through 2003. As demonstrated in Exhibit D-1, a simple linear regression analysis using actual 2000-2003 demand for Concord, Farmers, Horry, and VITELCO (taken from these carriers' DMD-1 TRP reports) indicates that the forecast demand relied on by these carriers are understated by at least 9.7 million, 17.9 million, 36.5 million, and 62.2 million minutes, respectively. None of these carriers provides any legitimate justification for assuming that future demand will depart so drastically from that predicted by traditional statistical techniques.

But even aside from the trend analyses, it is clear that the projected demand growth used by these carriers to compute traffic sensitive rates are understated. Horry, for example, uses the wrong baseline. Horry appears to have based its projected 2004/2005 demand on its *projected* 2002/2003 demand, rather than on its *actual* 2002/2003 demand.[16] Clearly, projections should be based on prior years' *actual* demand, not on prior years' *projections* that turned out to be wrong.

[16] *See* JSI Transmittal No. 96, filed June 16, 2004, D&J, at 4 (explaining that its "forecast for the June 20, 2005 projected year . . . represent[s] a 9.62 percent increase over the forecasted minutes (continued…)

VITELCO's predictions also are clearly flawed. VITELCO predicts a 6.4% *reduction* in demand even though it experienced demand *growth* of 15.22% in 2003 over 2002. VITELCO offers no legitimate basis for assuming that the historical trend will suddenly reverse in the next year, nor could it. All objective data reported by VITELCO strongly indicates continued demand growth. For instance, VITELCO reported to NECA and the Commission that the number of its working loops increased in both 2001 and 2002. *See* Exhibit D-5.[17]

It is critical that the Commission address these understatements in this proceeding because these carriers have made a habit out of understating demand. For example, Concord, Farmers, Horry and VITELCO all understated demand in the 2002/2003 tariff period, by 7.01%, 5.78%, 11.91% and 7.66%, respectively. *See* Exhibit D. The Commission should thus suspend these carriers' tariffs and open an investigation into appropriate traffic sensitive demand projections.

E. Fort Bend Failed To Remove An Appropriate Amount Of Local Switching Support And, As A Result, Overstates Its Local Switching Rates.

The Commission's rules require carriers to remove local switching support received by the carrier pursuant to Part 54.301 of the Commission's rules from the local switching revenue requirement. 47 C.F.R. §§ 61.106(b), 54.301. In the development of its local switching rate, Fort Bend did not remove an appropriate amount of local switching support from its local switching revenue requirement.

(...continued)
. . . for the year ending June 30, 2003.")

[17] VITELCO also appears be manipulating its predictions by using an unorthodox historical time period for making demand projections. The Commission has historically reviewed demand projections based on the past four years of annual results. But VITELCO's forecasts were computed "by estimating the compound rate of growth in demand over the January 2003-
(continued...)

The most recent Third Quarter USAC Report shows that Fort Bend will be receiving $1,573,860 for local switching support in 2004.[18] The Third Quarter USAC also reports a true-up of $245,328 for Fort Bend for local switching support funded in 2002.[19] Therefore, Fort Bend will be receiving $1,819,188 in 2004 for local switching support under 47 U.S.C. § 54.301. There is no reason to expect Fort Bend will receive less in 2005 than it received in 2004 (without the 2002 true-up). Therefore, the best estimate of Fort Bend's 2005 local switching support is $1,573,860. Averaging the 2004 and 2005 local switching support levels shows that Fort Bend should have removed $1,696,524 from its local switching revenue requirement for the 2004/2005 tariff period. But Fort Bend removed only $1,306,598.[20]

As a result of this error, Fort Bend overstates its local switching revenue requirement by $389,926 which in turn overstates its local switching rate. *See* Exhibit E. Accordingly, Fort Bend's tariff should be suspended and investigated.

F. VITELCO's Tariff Overstates Access Rates By Implementing Unexplained Increases To Presubscription Expenses and Unexplained Decreases To The Assignment Of Costs To The Billing And Collection Element.

VITELCO overstates access rates by implementing substantial unexplained increases in the amount of expenses allocated to the access elements. First, VITELCO reduced, without explanation, its assignment of Customer Services Expenses, Account 6620, to the Billing and

(...continued)
April 2004 period."

[18] USAC, Third Quarter Submission, Third Quarter Appendices, April 30, 2004, HC07, Local Switching Support Projected by State by Study Area - 3Q2004 http://www.universalservice.org/overview/filings/2004/Q3/default.asp.

[19] *Id.*, HC22, Interstate Common Line Support by State by Study Area - 2002 True-Up - 3Q2004

[20] Consolidated Communications, Transmittal No. 3, June 16, 2004, Attachment 9, Page 1 of 7, Line 19.

Collection element and increased its assignment to the access elements by more than $1.3 million. Second, VITELCO's Local Business Office Presubscription Expense increased from $435,012 in 2002[21] to $2,379,251 in 2003,[22] and this expense is assigned one hundred percent to the access elements.

It appears that these increases are caused, at least in part, by unlawful shifting of expenses from detariffed rate elements to the access rate elements. For example, while increasing the allocation of expenses to the access elements, VITLECO has decreased, again with no explanation, its allocation to Billing and Collection elements. Specifically, VITELCO decreased the End-User Billing and Payment & Collection, End-User Inquiry, and Toll Ticket Processing expenses from $689,988 in 2002[23] to $167,947 in 2003.[24]

A secondary effect of these reallocations of expenses is that the "Big Three Expense Factor," which is used to apportion corporate operations expense and general support facilities investment, changes in such a way that causes even more costs to be allocated to the access elements.

The net result of these misallocations is an increase in the interstate revenue requirement of $1,161,048 (the difference between 2003/2004 forecast of $1,633,383[25] and the projected

[21] VITELCO, Transmittal No. 51, filed June 16, 2003, Part 69, PYCOS02, A-11, Page 1 of 1, Line 9.

[22] VITELCO, Transmittal No. 53, filed June 16, 2004, Part 69, PYCOS03, A-11, Page 1 of 1, Line 9.

[23] VITELCO, Transmittal No. 51, filed June 16, 2003, Part 69, PYCOS02, A-11, Page 1 of 1, Lines 11, 12 & 20.

[24] VITELCO, Transmittal No. 53, filed June 16, 2004, Part 69, A-11, PYCOS03, Page 1 of 1, Lines 11, 12 & 20.

[25] VITELCO, Transmittal No. 51, filed June 16, 2003, Part 69, TYCOS04, SUM1, Line 49.

2004/2005 amount of $472,235[26]). VITELCO's tariffs must be suspended and investigated because of these unexplained adjustments to its customer services expenses.

G. ALLTEL'S Forecast of DSL Investment Is Overstated And Inconsistent With Its Forecast Of Reduced Demand.

ALLTEL has inflated its special access revenue requirements by projecting an increase in Special Access investment of $11,473,751, caused by a massive increase in DSL investment of $88,479,856 for the 2004/2005 tariff period that is not justified by any data it has submitted. Indeed, at the very time it is projecting this massive increase in investment, it is projecting a *decrease* in the number of special access loops of 14,787 (7.09% overall decrease) – a number that includes DSL loops. *See* Exhibit G. Nothing in ALLTEL's supporting material justifies this counter-intuitive result.

Specifically, ALLTEL's Digital special access service loops, including Digital Data 2.4 Kbps, 4.8 Kbps, 9.6 Kbps, 19.2 Kbps, 64 Kbps, Hi-Cap 1.544 Mbps, SOSCS OCC3 and OCC12 digital service loops are projected to decline by 4.70% in the prospective period. *See id.* Yet, ALLTEL reports an increase of 3.53% for its special access total plant in service investment of $336.778 million. A significant portion of this special access investment is for the disproportionate growth shown for DSL investment, all of which is assigned to the interstate special access element. ALLTEL reports an implausible 298.76% increase for DSL investment, from $43.505 million in 2002, to $129.984 million in 2003. For the prospective 2004/2005 period, ALLTEL projects a decline in demand, but nevertheless projects further remarkable growth in investment of $204.287 million – an additional increase of 155.93%.

[26] VITELCO, Transmittal No. 53, filed June 16, 2004, Part 69, TYCOS04, SUM1, Line 49.

The unjustified level of DSL investment projected by ALLTEL has clearly inflated the rate-base underlying ALLTEL's special access revenue requirement by approximately $30 million. The ALLTEL special access customer base, including DSL customers, is simply not large enough to support this type of explosive growth in DSL investment. The inclusion of these costs in ALLTEL's rate-base will continue to inflate the costs assigned to the special access elements and will allow it to charge unnecessarily higher access rates to its access customers.[27] The special access total plant in service should more reasonably reflect the decline shown in its special access loop demand. For this reason, the Commission should suspend and investigate ALLTEL's special access rates.

H. Hargray Telephone Company's Tariff Unlawfully Recovers DSL Costs From Special Access Customers.

Hargray Telephone Company ("Hargray") is unlawfully recovering at least $346,008 of DSL expenses from special access customers. *See* Exhibit H. The special access rate element includes both a projected DSL revenue requirement, which must be recovered from DSL customers, and projected special access revenue requirements, which must be recovered from special access customers. Hargray, however, does not identify in its tariff the portion of the special access rate element that it has allocated to DSL and special access customers. It is, however, possible to make that determination using other information in Hargray's tariff. And that analysis confirms that Hargray's tariff unlawfully seeks to recover DSL costs from special access customers.

[27] AT&T performed the same analysis of special access/DSL investment for the other carriers. The companies that are projecting increases to their special access/DSL investment are also projecting an increase in their special access loops. Those companies that are projecting a decrease or moderate increases in their special access loop have either decreased investment or have maintained it at the same level as the prior year's. *See* Exhibit I.

Most of Hargray's projected DSL costs are reported in Central Office Equipment Category 4.11 DSL Investment.[28] That entry shows that Hargray's projected 2004/2005 DSL costs are $5,080,524, all of which has been assigned to the special access rate element.[29] The revenue requirement associated with those DSL costs is computed by applying the appropriate annual carrying charge factor of 28.12% to the $5,080,524 DSL investment. That computation shows that Hargray's DSL revenue requirement is $1,428,537. *See* Exhibit H. Accordingly, an amount equal to $1,428,537 of the revenues recovered through the special access rate element should be assigned to DSL customers. If less than that amount is assigned to DSL customers, then non-DSL customers (*i.e.,* special access customers) are subsidizing Hargray's DSL costs.

Hargray's tariffs do indeed assign less than the full $1,428,537 to DSL customers, with the rest being assigned to special access customers. Specifically, Hargray's total special access revenue requirement – which reflects both DSL and special access costs – is $4,201,016.[30] Hargray's tariff shows that special access-only revenues account for $3,118,487 of the total $4,201,016, which means that the remaining $1,082,529 has been assigned to DSL customers.[31] But, as noted, the total DSL revenues are $1,428,537, which means that Hargray's tariffs underallocate $346,008 to DSL customers, which in turn means that Hargray's tariff unlawfully seeks to recover $346,008 in DSL revenues from special access customers.

[28] 2004 Annual Access Tariff Filing, Transmittal No. 96, filed June 16, 2004, 2004/2005 Prospective Part 36 Cost Study, Line 51.

[29] *Id.*

[30] 2004 Annual Access Tariff Filing, Transmittal No. 96, filed June 16, 2004, 2004/2005 Prospective Part 36 Cost Study, Line 30.

[31] *Id.*, Attachment 9, Page 4 of 4.

Hargray's tariffs should thus be suspended and investigated, and Hargray should be required to correct this error and provide a summary of all the rates, demand and revenues contained in the special access element.

I. Concord, Coastal And Horry Have Filed Excessive Cash Working Capital Requirements.

Concord, Coastal and Horry have employed excessive net lag periods, and as a result their cash working capital ("CWC") revenue requirements are inflated, in total, by $461,000, and their interstate revenue requirements are inflated, in total, by $79,000. *See* Exhibit I.[32] The net lag periods used by these carriers reflect unsupported departures from those of similarly situated LECs. For example, AT&T's survey of ALLTEL's CWC found a maximum lag period of 16 days. *See* Exhibit I.

Because these LECs have departed from the 15-day standard, Concord, Coastal and Horry were required to determine their net lag period by conducting a lead-lag study.[33] In such a study, Concord, Coastal and Horry must supply accurate data that are representative of current operations and adequately explain and justify their proposed lag periods.[34] Neither Concord, Coastal nor Horry has provided a lag study, nor any other supporting documentation to explain why it should be entitled to a net lag that exceeds the standard 15-day lag.

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[32] CWC is the amount of investor-supplied funds required to pay operating expenses incurred in providing services prior to the receipt of revenues for such services. CWC is generally computed by determining the revenue lag and the expense lag and then multiplying the difference by the carrier's average daily operating expenses. Revenue lag is the average number of days between the date a service is provided and the date the associated revenues are collected. Expense lag is the average number of days between the date a service is provisioned and the date the expenses associated with those services are paid. The difference between revenue lag and expense lag is referred to as the net lag.

[33] *See 1997 Annual Access Tariff Filings*, Memorandum Opinion and Order, CC Docket 97-149, 13 FCC Rcd. 3815, ¶¶ 221-224 (rel. June 27, 1997).

The Commission has, in the past, suspended and investigated LEC tariffs relying on similar overstated net lag periods that were unsupported by a lead lag study.[35] Likewise, the Commission should suspend and investigate Concord's, Coastal's and Horry's tariffs that reflect their current CWC revenue requirements and direct those LECs either to justify the excessive CWC amounts or to reduce them to appropriate levels.

J. VITELCO Has Failed To Comply With FCC Regulations To Provide Required Cost Support In Support Of Its Access Tariff Filing.

Part 61.38(b)(1) of the Commission's rules, 47 C.F.R. § 61.38(b)(1) requires all Part 61.38 carriers to file required cost support with access tariff filings. VITELCO is a Part 61.38 carrier and had failed to provide an essential component of the cost support. Among the required cost support that VITELCO has not filed are cost of service studies for the most recent 12 month period and a projection of costs for the prospective tariff period. The cost of service study must include its Part 36 and Part 69 cost studies. Part 36 supports the jurisdictional separations of its costs between the intrastate and interstate jurisdictions and Part 69 supports the assignment of the interstate costs to the required access elements. VITELCO has failed to provide a Part 36 cost study for its historical costs and for the prospective period. Validation of traffic factors and expense factors cannot be performed without the submission of these studies. VITELCO is thus clearly in violation of the Commission's rules and its tariff filing must be suspended and placed under investigation until such documentation is made available for interested parties to review and evaluate to determine the appropriateness of the rates filed.

(...continued)
[34] *See id.*

[35] *See, e.g., 1997 Annual Access Tariff Filings,* 12 FCC Rcd 11417, ¶¶ 62-66 (1997).

II. NEVADA BELL'S PRICE CAP TARIFF SHOULD BE SUSPENDED AND INVESTIGATED BECAUSE IT INCLUDES AN APPARENT CLERICAL ERROR THAT ALLOCATES THE WRONG AMOUNT OF ATS REDUCTIONS TO THE LOCAL SWITCHING SUB-BAND.

Nevada Bell's tariff support material appears to contain a clerical error that assigns the incorrect amount of Average Traffic Sensitive ("ATS") rate reductions to the Local Switching Sub-Band. Nevada Bell's tariff correctly reduces the Average Traffic Sensitive (ATS) rate by $1,717,687.[36] The Commissions rules require Nevada Bell to assign a portion of these ATS reductions to the Local Switching sub-band.[37] Nevada Bell computes this amount to be $583,197.[38] But Nevada Bell's tariff assigns only $192,856 to its Local Switching sub-band, instead of $583,197.[39] This error thus overstates local switching rates by $390,341.

[36] Nevada Bell 2004 Annual Filing, Transmittal No. 67, TRP Chart TGT-3, Line 1100.

[37] Nevada Bell must assign to the Local Switching Band an amount that is "greater than or equal to the percentage proportion of Local Switching revenues to the total sum of revenues for Local Switching, Local Switching Trunk Ports, Signaling Transfer Point Port Termination, Switched Direct Trunked Transport, Signaling for Switched Direct Trunked Transport, Entrance Facilities for switched access traffic, Tandem Switched Transport, and Signaling for Tandem Switching (*i.e.*, Local Switching gets at least its proportionate share of reductions)." 47 C.F.R. § 61.45 (i)(2)(iii).

[38] Nevada Bell 2004 Annual Filing, Transmittal No. 67, TRP Chart TGT-2, Line 720.

[39] Nevada Bell 2004 Annual Filing, Transmittal No. 67, TRP Chart SUM-1, Line 130, Column E.

CONCLUSION

For the reasons stated above, the Commission should suspend for one day and investigate the tariff revisions filed by all LECs detailed in Appendix A and impose an accounting order.

Respectfully submitted,

AT&T Corp.

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June 23, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2004, I caused true and correct copies of the forgoing Petition of AT&T Corp. to be served on all parties by telecopier and mailing, postage prepaid to their addresses listed on the attached service list.

Dated: June 23, 2004
Washington, D.C.

/s/ Peter Andros
Peter Andros

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APPENDIX A

TARIFFS WHICH THE COMMISSION SHOULD SUSPEND AND INVESTIGATE

RATE-OF-RETURN LEC TARIFFS

COMPANY	TARIFF NO.	TRANSMITTAL NO.
ALLTEL	1	138
CHILLICOTHE	1	80
EL PASO (GVNW)	2	198
WARWICK (JSI)	1	96
HARGRAY (JSI)	1	96
FARMERS TEL (JSI)	1	96
CONCORD (JSI)	1	96
COASTAL (JSI)	1	96
HORRY (JSI)	1	96
NECA	5	1030
MOULTRIE	1	17
CONSOLIDATED COMMUNICATIONS (TXU & FORT BEND TEL)	1	3
VIRGIN ISLANDS (VITELCO)	1	53

NOTE: The above rate-of-return LEC tariffs should be suspended for one day.

PRICE CAP LEC TARIFFS

COMPANY	TARIFF NO.	TRANSMITTAL NO.
SBC (NEVADA BELL)	1	67

NOTE: The above price cap LEC tariff should be suspended for one day.

Exhibit A